IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Crl.Rev.Pet.No. 3807 of 2007()

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CRA.589/2005 of III ADDL.SESSIONS COURT, ERNAKULAM
CC.664/2003 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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REVN. PETITIONER:

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1. IVAN A.VARGHESE,
(DIRECTOR AIMS), 64, 708,
ALACKAL HOUSE, AYYAPPANKAVU
KOCHI-18.

2. ADVANCED INSTITUTE OF MANAGEMENT STUDIES
(AIMS) MINI MARKET COMPLEX
DESHABHIMANI JUNCTION, KALOOR
COCHIN-17 REPRESENTED BY ITS
MANAGING DIRECTOR IVAN A.VARGHESE

BY ADV. SRI.BOBAN PALAT

RESPONDENTS:

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1. M/S.MEDIA EXPRESSION
3RD FLOOR, NORTH PLAZA,
NORTH RAILWAY STATION ROAD
KOCHI, REPRESENTED BY
ITS PROPRIETOR, SIBY JOSEPH

2. STATE OF KERALA REPRESENTED
BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**V. RAMKUMAR, J.**

**Crl. R.P. No. 3807 OF 2007**

**Dated this the 24th day of October, 2007**

**O R D E R**

In this revision filed under Section 397 read with Section 401 Cr.P.C. the petitioners who were the accused in C.C. No.664/2003 on the file of the J.F.C.M.-I, Kochi challenge the conviction entered and the sentence passed against them for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the revision petitioners and the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioners re-iterated the contentions in support of the revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the revision petitioners/accused failed to make the payment within 15 days of

receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioners while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioners.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the revision petitioners. I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed by the courts below on the revision petitioner is set aside and instead he is sentenced to pay a fine of Rs.10,000/- (Rupees ten thousand only) [giving credit to the sum of Rs.10,000/- (Rupees ten thousand only) deposited by the revision petitioners pursuant to the orders of the lower appellate court and which amount shall be allowed to be withdrawn by the 1st respondent complainant] within three months from today, failing which he shall suffer simple imprisonment for three months by way of default sentence. As

and when the fine amount is deposited, the same shall be paid to the 1st respondent complainant by way of compensation under Section 357(1) Cr.P.C.

This revision is disposed of confirming the conviction but modifying the sentence as above.

**(V. RAMKUMAR, JUDGE)**

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